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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.		
10/541,397	07/01/2005	Hiroshi Yamazaki	01165.0943	6309		
22852	7590	12/24/2008	EXAMINER			
FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER LLP 901 NEW YORK AVENUE, NW WASHINGTON, DC 20001-4413				HURLEY, SHAUN R		
ART UNIT		PAPER NUMBER				
3765						
MAIL DATE		DELIVERY MODE				
12/24/2008		PAPER				

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/541,397	YAMAZAKI ET AL.	
	Examiner	Art Unit	
	Shaun R. Hurley	3765	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 26 August 2008.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-5 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ . |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>12/03/08</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| | 6) <input type="checkbox"/> Other: _____. |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hernandez et al (6458455).

Hernandez teaches a thread for use in a stretchable fabric article comprising 30% by weight or more of a staple fiber formed out of one type of polytrimethylene terephthalate (Column 3, lines 26-47). Polytrimethylene terephthalate inherently has breaking elongation of greater than 100%, instantaneous elastic recovery at 5% elongation of greater than 65%, at 20% of greater than 60, and at 30% of greater than 60%. While Hernandez essentially teaches the invention as detailed, he fails to specifically teach what the resultant breaking elongation and instantaneous elastic recovery data would be for a blended yarn of PTT and cotton, which would obviously be lower than that of 100% PTT. It would have been obvious, however, to one of ordinary skill in the art at the time the invention was made, to have utilized enough cotton to reduce the data percentages to those desired, so as to control stretch and strength. PTT has expected ranges of breaking elongation and elastic recovery. Since cotton inherently has lower expected ranges, and blend of the two fibers would obviously have a range therebetween. Given an intended use, such as sewing thread, the ordinarily skilled artisan would have been more than capable of determining the correct amounts through routine experimentation. The step of

lowering the breaking elongation and elastic recovery by blending PTT with another fiber is obvious, and its results expected.

Response to Arguments

3. Applicant's arguments filed 26 August 2008 have been fully considered but they are not persuasive.

Applicant argues the properties of PTT which Examiner stated were inherent. He specifically argues the breaking elongation, and recites column 6, lines 65-67 which show 20-55%. Examiner's position is that even if Applicant's argument is considered, it shows a range which overlaps Applicant's claimed range, and even with the addition of other fibers, would obviously result in the breaking elongation as claimed. But with regards to the original rejection, Applicant argues that the fiber taught in the POLYMER article could not be used as a filament or short fiber. Examiner's position is that it could be used, while perhaps not providing ideal properties. The point is that Applicant's claim, in Examiner's opinion, states nothing more than the inherent properties of a known material in a known structure, and Applicant has provided no clear reason why this is not already known, or at least obvious to try to one of ordinary skill in the art given the information provided.

Conclusion

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after

the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shaun R. Hurley whose telephone number is (571) 272-4986. The examiner can normally be reached on Mon - Fri, 8:00 am - 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Welch can be reached on (571) 272-4996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Shaun R Hurley
Primary Examiner
Art Unit 3765

SRH
22 December 2008

/Shaun R Hurley/
Primary Examiner, Art Unit 3765